

Forty-eighth Legislature
Second Regular Session

COMMITTEE ON JUDICIARY

HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1265

(Reference to Senate engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 38-1101, Arizona Revised Statutes, is amended to
3 read:

4 38-1101. Law enforcement officers; probation officers; right to
5 representation; right to evidence on appeal; change
6 of hearing officer or administrative law judge;
7 definitions

8 A. If an employer interviews a law enforcement officer or probation
9 officer and the employer reasonably believes that the interview could result
10 in dismissal, demotion or suspension:

11 1. The law enforcement officer or probation officer may request to
12 have a representative of the officer present at no cost to the employer
13 during the interview. The law enforcement officer or probation officer shall
14 select a representative who is available on reasonable notice so that the
15 interview is not unreasonably delayed. The representative shall participate
16 in the interview only as an observer. Unless agreed to by the employer, the
17 representative shall be from the same agency and shall not be an
18 attorney. The law enforcement officer or probation officer shall be
19 permitted reasonable breaks of limited duration during any interview for
20 telephonic or in person consultation with others, including an attorney, who
21 are immediately available. An employer shall not discipline, retaliate
22 against or threaten to retaliate against a law enforcement officer or
23 probation officer for requesting that a representative be present or for
24 acting as the representative of a law enforcement officer or probation
25 officer pursuant to this paragraph.

26 2. Before the commencement of any interview described in this section,
27 the employer shall provide the law enforcement officer or probation officer
28 with a written notice informing the officer of the specific nature of the

1 investigation, the officer's status in the investigation, all known
2 allegations of misconduct that are the reason for the interview and the
3 officer's right to have a representative present at the interview.

4 B. Nothing in this subsection shall require the employer to either:

5 1. Stop an interview to issue another notice for allegations based on
6 information provided by the employee during the interview.

7 2. To disclose any fact to the employee or the employee's
8 representative that would impede the investigation.

9 C. Subsection A does not apply to an interview of a law enforcement
10 officer or probation officer that is:

11 1. In the normal course of duty, counseling or instruction or an
12 informal verbal admonishment by, or other routine or unplanned contact with,
13 a supervisor or any other law enforcement officer or probation officer.

14 2. Preliminary questioning to determine the scope of the allegations
15 or if an investigation is necessary.

16 3. Conducted in the course of a criminal investigation.

17 4. Conducted in the course of a polygraph examination.

18 D. In any appeal of a disciplinary action by a law enforcement officer
19 or probation officer, the parties shall exchange copies of all relevant
20 documents and a list of all witnesses pursuant to the following time periods
21 and requirements:

22 1. Within three business days after the employer's receipt of a
23 written request from the law enforcement officer or probation officer for a
24 copy of the investigative file that is accompanied by a copy of the filed
25 notice of appeal, the employer shall provide a complete copy of the
26 investigative file as well as the names and home or work mailing addresses of
27 all persons interviewed during the course of the investigation.

28 2. No later than five business days before the appeal hearing, or, if
29 the appeal hearing is scheduled more than twenty days after the notice of
30 appeal, no later than ten business days before the appeal hearing, the
31 employer and the law enforcement officer or probation officer shall exchange

1 copies of any documents that may be introduced at the hearing and that have
2 not previously been disclosed.

3 3. No later than five business days before the appeal hearing, or, if
4 the appeal hearing is scheduled more than twenty days after the notice of
5 appeal, no later than ten business days before the appeal hearing, the
6 employer and the law enforcement officer or probation officer shall exchange
7 the names of all witnesses who may be called to testify. A witness may be
8 interviewed at the discretion of the witness. The parties shall not
9 interfere with any decision of a witness regarding whether to be
10 interviewed. An employer shall not discipline, retaliate against or threaten
11 to retaliate against any witness for agreeing to be interviewed or for
12 testifying or providing evidence in the appeal.

13 E. It is unlawful for a person to disseminate information that is
14 disclosed pursuant to subsection D to any person other than the parties to
15 the appeal and their lawful representatives for purposes of the appeal of the
16 disciplinary action. This subsection does not prohibit the use of the
17 information in the hearing or disclosure pursuant to title 39, chapter 1,
18 article 2.

19 F. The employer or the law enforcement officer or probation officer
20 may seek a determination by the hearing officer, administrative law judge or
21 appeals board hearing the appeal regarding any evidence that the employer or
22 the law enforcement officer or probation officer believes should not be
23 disclosed pursuant to subsection D because the risk of harm involved in
24 disclosure outweighs any usefulness of the disclosure in the hearing. In
25 determining whether evidence will be disclosed, the hearing officer,
26 administrative law judge or appeals board may perform an in camera review of
27 the evidence and may disclose the material subject to any restriction on the
28 disclosure, including the closing of the hearing or the sealing of the
29 records, that the hearing officer, administrative law judge or appeals board
30 finds necessary under the circumstances.

31 G. In any appeal of a disciplinary action by a law enforcement officer
32 or probation officer in which a single hearing officer or administrative law

1 judge has been appointed to conduct the appeal hearing, the law enforcement
2 officer or probation officer or the employer may request a change of hearing
3 officer or administrative law judge. In cases before the office of
4 administrative hearings, STATE PERSONNEL BOARD OR WHERE THE EMPLOYER IS A
5 COUNTY WITH A POPULATION OF TWO HUNDRED FIFTY THOUSAND OR MORE PERSONS OR A
6 CITY WITH A POPULATION OF SIXTY-FIVE THOUSAND OR MORE PERSONS, on the first
7 request of a party, the request shall be granted, PROVIDED THAT THE REQUEST
8 IS MADE WITHIN FIFTEEN CALENDAR DAYS OF NOTICE OF THE APPOINTMENT OF THE
9 HEARING OFFICER OR ADMINISTRATIVE LAW JUDGE. All other requests, including
10 any subsequent requests in cases ~~before the office of administrative~~
11 ~~hearings,~~ WHERE THE EMPLOYER IS A COUNTY WITH A POPULATION OF TWO HUNDRED
12 FIFTY THOUSAND OR MORE PERSONS OR A CITY WITH A POPULATION OF SIXTY-FIVE
13 THOUSAND OR MORE PERSONS, may be granted only on a showing that a fair and
14 impartial hearing cannot be obtained due to the prejudice of the assigned
15 hearing officer or administrative law judge. The supervisor or supervising
16 body of the hearing officer or administrative law judge shall decide whether
17 a showing of prejudice has been made.

18 H. A party who violates subsection A, D or E, unless the violation is
19 harmless, shall not be permitted to use that evidence at the hearing, except
20 on a showing of good cause. The hearing officer or administrative law judge,
21 on a showing of good cause, may grant the opposing party a continuance,
22 otherwise limit the use of the evidence or make such other order as may be
23 appropriate.

24 I. If the employer amends, modifies, rejects or reverses the decision
25 of a hearing officer, administrative law judge or board, the employer shall
26 state the employer's reasons for the amendment, modification, rejection or
27 reversal.

28 J. This section does not preempt agreements that supplant, revise or
29 otherwise alter the provisions of this section, including preexisting
30 agreements between the employer and the law enforcement officer or probation
31 officer or the law enforcement officer's or probation officer's lawful
32 representative association.

1 K. For the purposes of this section:

2 1. "Appeal" means a hearing before a state or local merit board, a
3 civil service board, an administrative law judge or a hearing officer.

4 2. "Disciplinary action" means the dismissal or demotion or the
5 suspension for more than forty hours of a law enforcement officer or
6 probation officer that is authorized by statute, charter or ordinance and
7 that is subject to a hearing or other procedure by a local merit board, a
8 civil service board, an administrative law judge or a hearing officer.

9 3. "Investigative file" means the law enforcement agency's complete
10 report and any attachments detailing the incidents leading to the
11 disciplinary action.

12 4. "Law enforcement officer" means:

13 (a) An individual, other than a probationary employee, who is
14 certified by the Arizona peace officer standards and training board, other
15 than a person employed by a multi-county water conservation district.

16 (b) A detention officer or correction officer who is employed by this
17 state or a political subdivision of this state.

18 5. "Probation officer" means a probation officer or surveillance
19 officer who is employed by this state or a political subdivision of this
20 state."

21 Amend title to conform

and, as so amended, it do pass

EDDIE FARNSWORTH
Chairman

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4/10/08
H:jjb